

May 4, 2007

IMMEDIATE RELEASE

THIS IS NOT AN OFFICIAL STATEMENT
OF THE COURT, BUT IS SOLELY FOR
THE CONVENIENCE OF THE PRESS.

IN THE SUPREME COURT OF THE STATE OF IDAHO

COWLES PUBLISHING COMPANY, a)
Washington corporation,)

Petitioner-Respondent-Cross Appellant,)

v.)

THE KOOTENAI COUNTY BOARD OF)
COUNTY COMMISSIONERS,)

Respondent,)

and)

WILLIAM DOUGLAS,)

Intervener,)

and)

IDAHO COUNTIES RISK MANAGEMENT)
PROGRAM UNDERWRITERS,)

Intervener-Cross Respondent,)

and)

MARINA P. KALINI,)

Intervener.)

COWLES PUBLISHING COMPANY, a)
Washington corporation,)

Petitioner-Respondent-Cross Appellant,)

v.)

THE KOOTENAI COUNTY BOARD OF)

Docket No. 32195

Coeur d'Alene, April 2007

2007 Opinion No. 74

Filed: May 4, 2007

Stephen W. Kenyon, Clerk

Docket No. 32206

COUNTY COMMISSIONERS,)
)
Respondent,)
)
and)
)
WILLIAM J. DOUGLAS,)
)
Intervener,)
)
and)
)
IDAHO COUNTIES RISK MANAGEMENT)
PROGRAM UNDERWRITERS,)
)
Intervener-Cross Respondent.)
)
and)
)
MARINA P. KALANI,)
)
Intervener-Appellant.)

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Honorable John R. Stegner, District Judge.

The district court's order granting Cowles's petition for access to public records is affirmed and the district court's permanent protective order sealing the settlement agreement is affirmed.

Witherspoon, Kelley, Davenport & Toole, P.S., Coeur d' Alene and Spokane, WA., for appellant Cowles Publishing in case number 32195.

Gregory D. Horne, Coeur d'Alene, argued for appellant in case 32206.

Anderson, Julian & Hull, LLP, Boise, for respondents in case 32195. Phillip J. Collaer argued.

Witherspoon, Kelley, Davenport & Toole, P.S., for respondents in 32206. Tracy N. LeRoy argued.

In an opinion written by Justice Roger Burdick and released today, the Idaho Supreme Court affirmed two orders of the district court: one determining that emails between two county employees were public records and a second permanently sealing a settlement agreement between Kootenai County and a former employee.

In March 2004, Kootenai County Prosecutor William Douglas hired Appellant, Marina P. Kalani, as the manager of the Juvenile Education and Training Court (JET Court). After the JET

Court failed to provide a quarterly report on its finances, access to the grant funding was temporarily suspended. The JET Court was then terminated. When the funding problems became known to the public, Douglas defended Kalani and her management of the program; additionally, he decided to continue the program out of County funds, including Kalani's salary. The Kootenai County Board of Commissioners started an investigation into the JET Court program finances. Meanwhile, the local press began printing allegations of an alleged improper relationship between Kalani and Douglas, based on statements of another Kootenai County employee. Douglas and Kalani both denied these allegations. Kalani eventually resigned as JET Court manager, and Douglas continued to defend her in the press.

Against this background, a reporter for the Spokesman Review made a public records request to the Kootenai County Board of Commissioners for all the email correspondence between Kalani and Douglas. The Kootenai County Board of Commissioners requested that Intervenor-Cross-Respondent, Idaho Counties Risk Management Program Underwriters (ICRMP), its insurer, handle the request. The County then identified in a log over one thousand emails sent between Kalani and Douglas, and produced certain emails in full, redacted information from certain emails and withheld certain emails. Respondent-Cross-Appellant, Cowles Publishing (the publisher of the Spokesman Review), then filed a Petition for Access to Public Records. The district court held that the emails were public records subject to disclosure. Kalani appealed this determination.

During the course of the litigation over the emails, several newspaper articles were published reporting that Kalani had settled a claim against Kootenai County through its insurer, ICRMP. Respondent-Cross-Appellant, Cowles Publishing Company had filed a public records request for the settlement agreement; ICRMP responded to the request, identifying that it had made a \$69,146.20 payment to Kalani. During a hearing on the Petition for access to the emails, the district court became concerned that the amount of the settlement reported in the newspaper articles differed from the amount disclosed by the parties at hearing and in documents before the district court. ICRMP intervened seeking to preserve the confidentiality of the settlement agreement. The court issued a temporary protective order, and then issued a protective order permanently sealing the settlement agreement. Cowles cross-appealed this determination.

Addressing first Kalani's appeal of the order finding the emails between her and Douglas were public records, the Court affirmed. It held that because the emails contained information relating to the administration of the public's business and were prepared by county employees using county owned equipment and software, they met the definition for public records set out in I.C. § 9-337(13). The Court reasoned that the public has a legitimate interest in these communications between Douglas, an elected official, and Kalani, an employee whom he hired and supervised, because when the JET Court's financial problems and eventual demise became apparent to the public, Douglas publicly defended Kalani and her management.

Additionally, the Court held that the emails were not exempt from disclosure pursuant to the personnel records exemption in I.C. § 9-340C(1) because they were informal correspondence between county employees and not the type of correspondence the legislature meant to exempt in I.C. § 9-340C(1). Finally, the Court held that Kalani could not assert a constitutional right to

privacy in the emails as she had signed the County's email policy and therefore had no reasonable expectation of privacy in the emails.

The Court then addressed Cowles's appeal of the district court's order permanently sealing the settlement agreement between Kalani and the County. It held that under the plain language of I.C. § 9-340D(11) only the statistical data and actual amount paid are public records once a case between a public employee and employer has settled; therefore, the actual document was exempt from disclosure.